SUPREME COURT, U. S.

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JOHN F. DAVIS, CL

IN THE

Supreme Court of the United States

October Term, 1967

No. 1360

AMERICAN CYANAMID COMPANY,
Petitioner,

v.

NOPCO CHEMICAL COMPANY,
Respondent.

RESPONDENT'S BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI

JEROME G. LEE
Counsel for Respondent
80 Pine Street
New York, New York 10005

Of Counsel:
GEORGE B. FINNEGAN, JR.
JOHN D. FOLEY
DAVID H. PFEFFER
OTTO G. OBERMAIER
MORGAN, FINNEGAN, DURHAM & PINE
80 Pine Street
New York, New York 10005

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The petition presents no sound reason why the Writ should be granted.

There is no conflict between the decisions of any Courts of Appeals. There is no Federal question which has been decided in a way in conflict with any decision of this Court. And there has been no departure from the accepted and usual course of judicial proceedings.

The present case is one of three patent suits filed respectively in the Western District of Virginia, in the Dis-

trict of New Jersey and in the Eastern District of Virginia, presenting the same issue as between the parties here.

The case in the *Western* District of Virginia was dismissed below by the District Court (Hon. Thomas J. Michie) and affirmed by the unanimous Court of Appeals for the Fourth Circuit, for failure to meet the rudimentary requirements of patent venue.

The decisions below were right, and there is no sound reason why this Court should grant the Writ.

Opinions Below

The opinion of the District Court for the Western District of Virginia is reported at 268 F.Supp. 506 and is printed in Petitioner's Appendix B at page 25a.

The unanimous opinion of the Court of Appeals for the Fourth Circuit is reported at 388 F.2d 818 and is printed in Petitioner's Appendix B at page 19a.

Restatement of Statutes Involved

The statutory provisions here involved are:

Title 28 United States Code

§1391 Venue Generally

(a) A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in the judicial district where all plaintiffs or all defendants reside, or in which the claim arose.

(b) A civil action wherein jurisdiction is not founded solely on diversity of citizenship may be brought only in the judicial district where all defendants reside, or in which the claim arose, except as otherwise provided by law.

(c) A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes.

(d) An alien may be sued in any district.

§1400 Patents and Copyrights

(b) Any civil action for patent infringement may be brought in the judicial district where the defendant resides, or where defendant has committed acts of infringement and has a regular and established place of business.

Restatement of the Case

Petitioner's statement of the case is incomplete. The facts are:

There is no alien in the present case.

Petitioner Cyanamid is a corporation of the State of Maine with its executive offices in Wayne, New Jersey—a few miles from the Federal Courthouse in Newark.

Respondent Nopco was a corporation of the State of New Jersey with its executive offices in Newark—a few blocks from the Federal Courthouse.

Petitioner Cyanamid commenced the present case for alleged infringement of its Jukes patent, against respondent Nopco and a customer, by filing a complaint in the *Western* District of Virginia on December 14, 1966. Copy of the complaint and summons was sent by mail to respondent Nopco in Newark, New Jersey. No service was attempted in Virginia.

Respondent Nopco had no property or facility in Virginia. It did not have a postal box or even a telephone in Virginia.

On December 30, 1966 respondent Nopco commenced an action in the U.S. District Court in Newark, New Jersey, against petitioner Cyanamid seeking a declaratory judgment that the Jukes patent and four other Cyanamid patents were invalid and not infringed. A second cause of action requested damages for unfair competition.

The docket entries for the New Jersey action, as certified by the Clerk, are printed in the appendix to this brief.

On February 21, 1967 petitioner Cyanamid filed a counterclaim in the New Jersey action affirmatively pleading that the Jukes patent was infringed by respondent Nopco.

In February and March 1967 both parties engaged in voluminous activity in the New Jersey action including the taking of many depositions, and the submission and answering of many interrogatories and requests for admissions. See the appendix hereto at pages A1-7.

On March 10, 1967 the District Court in the *Western* District of Virginia (Hon. Thomas J. Michie) rendered

its opinion dismissing Nopco from the present case for lack of venue. The Court found that Nopco had no "real or personal property * * * no office, manufacturing facility, warehouse or other storage facility, * * * no bank account, address (Post Office box or otherwise), or telephone listing within this district" (Pet. App. 26a).

The claim of Jukes patent infringement was tried by the District Court for the District of New Jersey (Hon. Anthony Augelli) on March 28 and 29, 1967 in a separate trial under Federal Rule 42(b). The parties offered the testimony of 10 witnesses and approximately 80 exhibits into evidence. Thereafter the parties submitted lengthy briefs and proposed findings.

On May 1, 1967 respondent Nopco was merged into the Diamond Alkali Company and the caption of the New Jersey action was amended to reflect the change.

On May 1, 1967 petitioner Cyanamid filed a new suit (civil action no. 5252) against Nopco, as a division of Diamond Alkali, in the *Eastern* District of Virginia. It charged the same infringement of the same Jukes patent by the same acts that had been tried on the merits in the separate plenary trial before Judge Augelli in New Jersey six weeks before.

On June 26, 1967 the New Jersey court granted Nopco's motion to restrain petitioner Cyanamid from prosecution of its new suit in the *Eastern* District of Virginia (App. A7).

Except for the dismissal of respondent Nopco for lack of venue, the instant case in the Western District of Virginia has been substantially dormant.

On January 11, 1968, the Court of Appeals unanimously affirmed the dismissal of respondent Nopco from the case in the Western District of Virginia for lack of venue under the patent venue statute, 28 U.S.C. 1400(b). The petition seeks review of that judgment.

Argument

Question Presented

The only question presented in the instant case is whether the Court of Appeals was right in unanimously affirming that a patent owner, desiring to sue an alleged domestic infringer, must at least meet the requirements of the patent venue statute, 28 U.S.C. 1400(b).

The same question has been considered and answered in the affirmative by this Court at least three times since 1942, and was restated and approved by this Court for the fourth time in *Pure Oil Co.* v. *Suarez,* 384 U.S. 202 (1966). It is well settled.

Petitioner's claim of patent infringement has been actively placed in issue and is *sub judice* in New Jersey, the home district of both parties. Thus, there is no reason of national interest, or of interest to the litigants, for this Court to devote time to the replowing of old ground by reviewing the dormant case dismissed below.

The First Reason Given for Granting the Writ is Inapposite

As its first reason, the petition argues at pages 6-9 that in affirming dismissal of the present case against Nopco for lack of patent venue the Court of Appeals below gave excessive weight to this Court's statements in *Schnell* v. *Peter Eckrich & Sons,* 365 U.S. 260 (1961). The petition alleges that by so doing, the Court of Appeals below brought itself "squarely in conflict" with two recent District Court decisions and the actual state of the law.

Actually, however, the decision of the Court of Appeals below on the only question in the case, i.e. venue in a patent suit against a domestic infringer, such as respondent Nopco, is in full accord with the so-called "conflicting" District Court decisions as well as with *Schnell* and with decisions of this Court before and after *Schnell.*

Schnell was a suit for patent infringement in Indiana against an Illinois corporation. This Court held that the suit was properly dismissed for lack of venue under the special patent venue statute, 28 U.S.C. 1400(b), stating:

> "As is pointed out in the cases, Congress adopted the predecessor to §1400(b) as a special venue statute in patent infringement actions to eliminate the 'abuses engendered' by previous venue provisions allowing such suits to be brought in any district in which the defendant could be served. *Stonite Products Co.* v. *Melvin Lloyd Co.,* 315 U.S. 561, 62 S.Ct. 780, 86 L.Ed. 1026. The Act was designed 'to define the exact jurisdiction of the * * * courts in these matters,' 315 U.S. at page 565, note 5, 62 S.Ct. at page 782, and not to

'dovetail with the general [venue] provisions.'" (page 262)

The *Schnell* case was decided in 1961. The *Stonite* case,* referred to in *Schnell* above, was decided in 1942. There, too, the patent suit was against an alleged domestic infringer, a Pennsylvania corporation. This Court considered the legislative history and intent of the general venue statute and special patent venue statute at length and held that the two did not dovetail.

This Court again reviewed the matter in a patent suit against a domestic infringer, with the same result, in *Fourco Glass Co.* v. *Transmirra Products Corp.*, 353 U.S. 222 (1957). There the accused domestic infringer was a West Virginia corporation.

Thus, the rule that a patent owner must at least meet the requirements of the special patent venue statute in a patent suit against a domestic alleged infringer, as decided by the Court of Appeals below with respect to respondent Nopco, already has been reviewed and established by this Court at least three times.

Indeed, the two so-called "conflicting" District Court opinions and the text writing, cited in the petition, are in accord.

Olin Mathieson Chemical Corp. v. *Molins Organizations, Limited*, 261 F.Supp. 436 (E.D.Va. 1966) was a patent suit filed in Virginia against an alien, i.e. an English corporation, that did not reside or have a place of business in any

* *Stonite Products Co.* v. *Melvin Lloyd Co.*, 315 U. S. 561 (1942).

judicial district within the United States. The question was whether it could be sued under the alien venue statute:

> "An alien may be sued in any district." (28 U.S.C. 1391(d))

Judge Butzner, then the District Judge, held that aliens could be sued for patent infringement under the alien venue statute. However, as to domestic infringers, the court stated that the special patent statute of Section 1400(b) controlled:

> "Title 28 U.S.C. 1400(b) exclusively determines venue for patent infringement proceedings against domestic defendants. [citing this Court's decisions in *Stonite, Fourco* and *Pure Oil*]." (page 440)*

The comments in *Moore's Federal Practice* (Second Edition) section 0.142[6], cited in the petition at page 8, also have to do with suits against aliens under the special statute concerned with aliens, i.e. 28 U.S.C. 1391(d).

The second so-called "conflicting" District Court case cited in the petition is similar. In *Chas. Pfizer & Co.* v. *Laboratori Pro-Ter Prodotti Therapeutici*, 278 F.Supp. 148 (S.D.N.Y. 1967), Judge Mansfield held that a patent suit was proper against an alien Italian corporation under the alien venue statute, i.e. 28 U.S.C. 1391(d). However, as to suits against domestic alleged infringers, such as respondent Nopco, Judge Mansfield's view was in exact accord with the decisions below in the present case. He stated:

> "As applied to suits against domestic corporations, there were sound reasons supporting the Supreme

* Judge Butzner, now a Circuit Judge, joined in the unanimous decision of the Court of Appeals below in the present case.

Court rationale of Congressional intent as to the relationship between §1400(b) and §1391(c). In enacting §1400(b) Congress was proceeding on the assumption that jurisdiction could always be acquired over a domestic infringer in *some* federal district in the United States. Hardship, inconvenience and additional expense might be visited upon a defendant, however, if it were required to respond in *any* district where it infringed rather than in the district where it resided or had a regular and established place of business. Congress therefore limited a plaintiff to suit in the latter district. The effect of holding §1400(b) exclusive in suits against a domestic corporation, therefore, has not been to deny the plaintiff relief but merely to require that he seek relief in a prescribed district." (pages 151-2, orig. emph.)

Thus, the point already has been carefully reviewed many times by this Court. It is well settled among the lower Federal courts. Patent suits against alleged domestic infringers, such as respondent Nopco, must meet the requirements of the special patent venue statute of 28 U.S.C. 1400(b).*

Indeed, in its own Memorandum of Law submitted to the District Court below on January 25, 1967, petitioner Cyanamid agreed:

"Venue in patent cases is governed by 28 U.S.C. 1400(b)." (page 1)

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* *E.g., General Radio Co.* v. *Superior Elec. Co.*, 293 F.2d 949 (1st Cir. 1961); *Moore* v. *Coats Co.*, 270 F.2d 410 (3rd Cir. 1959); *Holub Indus., Inc.* v. *Wyche*, 290 F.2d 852 (4th Cir. 1961); *Kay* v. *J. F. D. Manuf. Co.*, 261 F.2d 95 (5th Cir. 1958); *Johnson & Johnson* v. *Picard*, 282 F.2d 386 (6th Cir. 1960); *Knapp-Monarch Co.* v. *Casco Prod. Corp.*, 342 F.2d 622 (7th Cir. 1965); *Up-Right, Inc.* v. *Aluminum Safety Prod., Inc.*, 165 F. Supp. 742 (D.Minn. 1958); *Scaramucci* v. *FMC Corp.*, 258 F.Supp. 598 (W.D.Okla. 1966).

Reason 2 Begs the Question

Beginning at page 9, the petition states that the "plain words" of 28 U.S.C. 1391(b), as amended in November 1966, make its "terms" applicable to patent actions and that the legislative history material states it is intended to apply to "all civil actions". Therefore, the petition concludes, the decision below is contrary to the general venue statute itself.

Such argument begs the question.

The general venue statute, Section 1391, always had general terms and words. Both before and after the 1966 amendment, it was entitled "venue generally" and it referred to "a civil action" without defining the actions to which the statute applied.

The actions to which the general statute applied were left unaffected by the 1966 amendment. The amendment enlarged the number of *fora* by adding the six words—"or in which the claim arose"—but those words have nothing to do with the actions to which the statute applied. The amendment's legislative history material similarly was general. No mention was made of actions for patent infringement.

The argument that such general words and terms are inclusive of actions for patent infringement already has been reviewed and dismissed by this Court with respect to sub-section (c) of the same general statute in *Fourco Glass Co.* v. *Transmirra Products Corp.*, 353 U.S. 222 (1957). There, this Court rejected the same argument as follows:

> "The main thrust of respondents' argument is that §1391(c) is clear and unambiguous and that its terms include all actions—including patent infringement actions—against corporations, and, therefore, that the statute should be read with, and as supplementing, §1400(b) in patent infringement actions. That argument is not persuasive, as it merely points up the question and does nothing to answer it. For it will be seen that §1400(b) is equally clear and, also, that it deals specially and specifically with venue in patent infringement actions." (page 228)

Moreover, in the 1966 amendment Congress preserved intact the previous language in both 1391(a) and 1391(b)—"except as otherwise provided by law".

The phrase—"except as otherwise provided by law"—was first introduced into Section 1391 in the 1948 revision of the Judicial Code. The contemporaneous commentary of Professor Moore, a special consultant on the revision, makes clear that the phrase was inserted to limit the application of the general venue provision to just those civil actions for which there are no special venue statutes. Indeed, Moore gave patent suits as an example of the type of action excluded. *Moore, Commentary on the U.S. Judicial Code* 177 (1949) states:

> "The 'except as otherwise provided by law' clause, * * *, as related to diversity cases refers to the special venue provided for statutory interpleader and the stockholder's derivative action. And the clause as related to non-diversity cases refers to any special venue statute governing a particular federal type of action, *as for example, a suit for patent infringement.*" (emph. ours)

In the latest edition, fifteen years later, Moore's treatise emphasizes the point. It prefaces the above statement with the sentence:

> "Excepted from the general venue provisions are the numerous special venue provisions, some of which are contained in the Code." 1 *Moore, Federal Practice* ¶0.141[3] at 1415 (2d ed. 1964).

The lower Federal courts have had no difficulty with the matter. See, e.g. *Goldlawr, Inc.* v. *Shubert,* 169 F.Supp. 677, 680 (E.D.Pa. 1958):

> "By its express terms §1391(b) does not apply where a different law provides otherwise."

There is nothing to the contrary in this Court's recent opinion in *Pure Oil Co.* v. *Suarez,* 384 U.S. 202 (1966), a case cited in the petition. Petitioner's reliance thereon is misplaced.

In *Pure Oil,* the Court held that the general venue requirements of 28 U.S.C. 1391(c) can apply to actions under the Jones Act. This Court reviewed and compared the Jones Act history and intent with the special patent venue statute of 1400(b) and stated they had "quite a different history" (page 207). The controlling nature of 1400(b) in suits against alleged domestic patent infringers again was stated and approved (page 207).

Thus, *Pure Oil* v. *Suarez* represents the fourth time in recent years that this Court has manifested rejection of the basic contention presented in the petition.

Reason 3 Also is Inapposite

The essence of Reason 3 in the petition, page 11, is the contention that Congress at no time has ever enacted a special patent venue statute which was narrower than that in force for general federal question civil actions and no sound reasons can be advanced why patent venue should be narrower.

Here again the petition presents strained arguments based on suits against aliens. The present case is concerned, however, with a patent suit against respondent Nopco, a New Jersey corporation, a supposed domestic infringer.

The arguments in the petition fly in the face of the analysis of the history and purpose of the general venue and special patent venue statutes exhaustively stated in this Court's decisions in the *Stonite* case in 1942, the *Fourco* case in 1957 and the *Schnell* case in 1961. Those cases were concerned with domestic patent infringers.

With respect to the notion that "no sound reasons can be advanced" why patent venue should be and is narrower against domestic infringers, such notion is rebutted not only by this Court's opinions but also by the recent lower Federal court opinions relied on in the petition itself as we have noted above. See for example the quotation from Judge Mansfield's opinion in the *Pfizer* case at pages 9-10, *supra.*

At pages 11-13, the petition candidly reveals its desire to have this Court replow old ground. It argues that Mr. Justic Murphy's discussion in the *Stonite* case was incom-

plete because it did not include the analysis in Section 934 of *Robinson On Patents* (Boston 1890). The criticism is unjustified for at least two reasons. First, so far as pertinent, the Robinson comments say that the general venue statute may or *may not* apply to patent cases. Second, the Robinson comments were published in 1890, whereas the special patent venue statute on which Mr. Justice Murphy relied was not promulgated by Congress until 1897—7 years later.

Mr. Justice Murphy stated in *Stonite* that the Act of 1897

> was adopted to define the exact jurisdiction of the federal courts in actions to enforce patent rights and thus eliminate the uncertainty produced by the conflicting decisions * * * Congress did not intend the Act of 1897 to dovetail with the general provisions relating to the venue of civil suits, but rather that it alone should control venue in patent infringement proceedings." (pp. 565-6)

Despite the arguments to the contrary in the petition, Mr. Justice Murphy's statement is fully supported by the Congressional Record. During the debate on the bill, Congressman Mitchell, floor manager for the bill, stated:

> "Under the line of decisions which permit his being sued anywhere 'if found', this act [special patent venue] makes it easier for the defendant, and really *limits* to that extent the jurisdiction of the court;"
>
> * * *
>
> "The trouble has arisen in this matter that under the act of 1888 [general venue] some of the courts were uncertain whether or not the law did or did not apply

to patent cases, and therefore this *special bill relating to patents solely* has been brought up because of the indefiniteness and uncertainty arising from different constructions of the act of 1888 as applied to patent cases." (29 Cong. Rec. 1901) (emph. ours)

Petitioner Cyanamid in its third reason also is critical of another decision of this Court. It attempts to place itself in the company of Professor Moore by arguing that he, like it, once questioned the soundness of this Court's opinion in *Fourco*.

However, Professor Moore's comments on *Fourco* in 1 *Moore, Federal Practice* ¶0.144[9] at 1630-33 are inapplicable to Section 1391(b) on which the petition relies. Moore's comments were concerned with general venue Section 1391(c). As he expressed it, "[a]lthough legislative history shows that §1400 was intended to be an exclusive provision, it is also demonstrable that Congress intended §1391(c) to have a universal application." (*Id.* at 1632)

The Moore comments are not applicable to Section 1391(b) which always had and still contains the phrase "except as otherwise provided by law." No similar provision was contained in Section 1391(c). As we have already demonstrated, pages 12-13 *supra*, Professor Moore wrote that this phrase excludes suits for patent infringement.

Thus, the petition confuses the matter. It cites authorities and text writings on matters involving other statutes, such as 1391(c) on suits against corporations and 1391(d) on suits against aliens, as supposed support for the request

that this Court review the different statute of Section 1391(b). Moreover, the petition's own authorities are in accord with the decisions below on the actual matter here involved.

The petition's authorities show that a suit against an alleged domestic patent infringer, such as respondent Nopco, must meet the requirements of the special patent venue statute, 1400(b); and, this Court has said so not once but many times since 1942.

No useful purpose, beyond the interest of the litigants, would be served by still another review by this Court.

Forum Shopping

The argument presented in the petition on this subject is a strange one.

The petition states in the point heading on page 11 and in the discussion on pages 16-17 that "notorious forum shopping tactics now characteristic of patent litigation" could be reduced by giving wider play to the transfer power under 28 U.S.C. 1404 with wider venue provisions.

First, the argument is concerned with the tail rather than the dog. In the name of increasing the choice of *fora* available to a transferor court under 28 U.S.C. 1404, it would multiply the choice of *fora* available to a forum shopping patent owner.

Second, the petition argument is strange in the circumstances of the present case.

The present suit was brought in the Western District of Virginia against respondent Nopco and an alleged Virginia customer. Although Nopco had customers all over the United States and was a New Jersey corporation with its headquarters in Newark, a few blocks from the Federal Courthouse, and although Cyanamid's own executive offices were only a few miles away in Wayne, New Jersey, the suit was brought in Virginia where, as the courts below found, Nopco had no business facility whatever. Nopco does not even have a telephone in Virginia (Pet. App. 20a and 26a-28a).

Moreover, after the suit below was dismissed for lack of venue, and after the same claim of Jukes patent infringement was asserted by petitioner in its counterclaim against Nopco in the New Jersey declaratory action and submitted to separate trial there on the merits, petitioner filed still another suit asserting the same charge of Jukes patent infringement by the same acts of Nopco in the *Eastern* District of Virginia.

The courts below have effectively dealt with the situation. The New Jersey court (Hon. Anthony Augelli) has enjoined petitioner from proceeding with the action in the Eastern District of Virginia (page A7 *infra*), and the New Jersey court has the Jukes patent infringement claim *sub judice* after a separate trial (page A5 *infra*).

The petition seeks to turn the clock backwards. At page 5, the petition requests that this Court remand the present dormant case to the Western District of Virginia for the purpose of determining whether, in fact, a claim ever

did arise there. Forum shopping would not be discouraged; it would be encouraged.

In essence, the petition not only asks this Court to devote time to a review of the well-settled matter of venue in patent infringement suits, but also the petition, in effect, seeks duplication of judicial effort by the Western District of Virginia and the District of New Jersey. There is no compelling reason, of national importance or otherwise, for such a waste of judicial time.

Conclusion

The petition fails to show any reason which should move this Court to review the carefully considered unanimous decisions of the two tribunals below.

The petition is without merit and should be denied.

Respectfully submitted,

JEROME G. LEE
Counsel for Respondent
80 Pine Street
New York, New York 10005

Of Counsel:
GEORGE B. FINNEGAN, JR.
JOHN D. FOLEY
DAVID H. PFEFFER
OTTO G. OBERMAIER
MORGAN, FINNEGAN, DURHAM & PINE
80 Pine Street
New York, New York 10005

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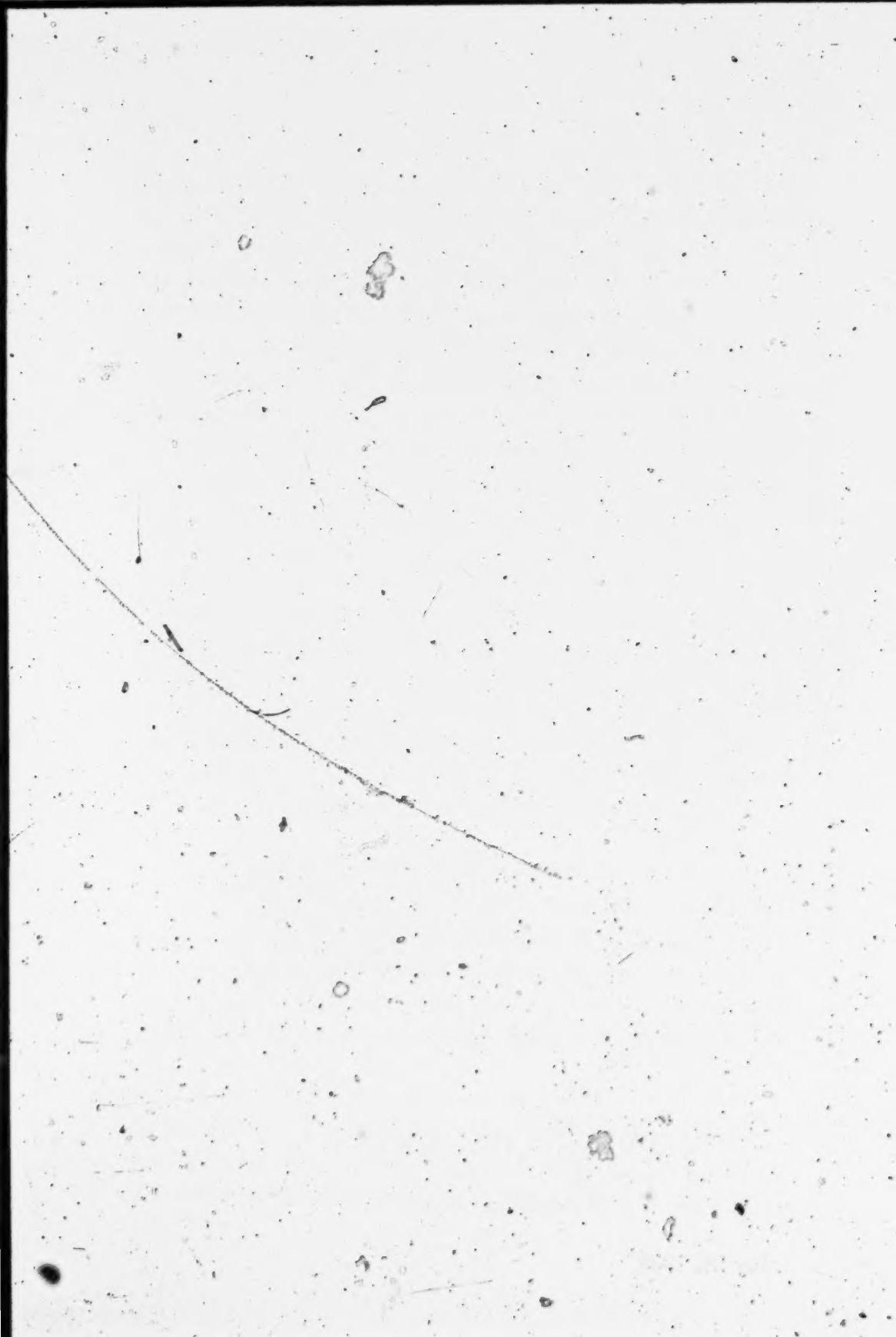

Appendix

Docket entries of Civil Action No. 129-66, in the United States District Court for the District of New Jersey, originally entitled *Nopco Chemical Co.* v. *American Cyanamid Co.*, as amended to *Diamond Alkali Co.* v. *American Cyanamid Co.*, as certified by the Clerk of the Court.

Date	*Filings—Proceedings*
1- 3-67	Complaint filed 12-30-66.
1- 3-67	Summons issued.
1- 3-67	Notice of Allocation and Assignment filed. (Newark-Augelli)
1- 9-67	Plaintiff's motion for temporary injunction filed 1-6-67.
1- 9-67	Affidavit of Melvin Hochberg in support of plaintiff's motion for temporary injunction filed 1-6-67.
1- 9-67	Order fixing 1-16-67 for hearing on plaintiff's motion for preliminary injunction filed 1-6-67. (Augelli) Notice mailed.
1-12-67	Plaintiff's first set of interrogatories filed.
1-12-67	Affidavit of service of plaintiff's first set of interrogatories filed.
1-13-67	Defendant's notice to take deposition of Nopco Chemical Company filed 1-12-67.
1-19-67	Defendant's motion for summary judgment dismissing the First Claim set forth in paragraphs 3-20, inc., etc., filed 1-18-67. (Brief submitted)

Appendix

Date	*Filings—Proceedings*
1-19-67	Affidavits of James Edwin Archer et als in support of defendant's opposition to plaintiff's motion, and acknowledgment of service of copies of affidavits, memorandum and motion for summary judgment, etc., filed 1-18-67.
1-20-67	Depositions of Grady D. Ward and Melvin Hochberg taken on January 13, 1967, filed 1-19-67.
1-24-67	Hearing on plaintiff's motion for preliminary injunction. Counsel reported motion withdrawn. (Augelli) (1-20-67).
1-24-67	Ordered leave granted plaintiff to amend its complaint. (Augelli) (1-20-67)
1-24-67	Summons returned served on 1-11-67, filed.
2- 2-67	Plaintiff's notice to take depositions of James Edwin Archer, filed.
2- 2-67	Affidavit of service of copies of plaintiff's notice to take depositions of James Edwin Archer, filed.
2- 3-67	Amended Complaint and acknowledgment of service, filed 2-2-67.
2- 6-67	Defendant's Request for Admission, filed 2-3-67.
2- 7-67	Stipulation and Order extending defendant's time to answer plaintiff's First Set of Interrogatories to 2-20-67; extending time to answer amended complaint for 20 days filed 2-6-67. (Augelli) Notice mailed.

Date	*Filings—Proceedings*
2-15-67	Plaintiff's answers to defendant's requests for admissions, filed 2-14-67.
2-15-67	Affidavit of service of copies of plaintiff's answers to defendant's requests for admissions, filed 2-14-67.
2-20-67	Plaintiff's First Request for Admissions, filed 2-17-67.
2-20-67	Plaintiff's second set of interrogatories, filed 2-17-67.
2-20-67	Plaintiff's notice to take depositions of Max J. Harvey and J. M. Pensack, filed.
2-20-67	Affidavit of service of copies of plaintiff's notice to take depositions of Max J. Harvey and J. M. Pensack, filed.
2-21-67	Answers and objections of defendant, American Cyanamid Company to plaintiff's first set of interrogatories, filed 2-20-67.
2-23-67	Notice of motion and motion by defendant to transfer action to the Western District of Virginia, and acknowledgment of service, filed 2-21-67 (ret. 3-13-67). (Brief submitted)
2-23-67	Answer to amended complaint and counterclaim, filed 2-21-67.
2-23-67	Plaintiff's notice to take depositions of Milton A. Petty, Jr., filed.
2-23-67	Affidavit of service of copies of plaintiff's notice to take depositions of Milton A. Petty, Jr., filed.

Date	*Filings—Proceedings*
2-27-67	Plaintiff's notice to take depositions of E. L. R. Stokstad and Thomas H. Jukes, filed 2-24-67.
2-27-67	Affidavit of service of copies of plaintiff's notices to take depositions of E. L. R. Stokstadt, et al, filed 2-24-67.
2-27-67	Plaintiff's notice to take depositions of Edward J. Backus, filed.
2-27-67	Affidavit of service of copies of plaintiff's notice to take depositions of Edward J. Backus, filed.
2-28-67	Defendant's objections to plaintiff's second set of interrogatories, filed 2-27-67.
2-28-67	Defendant's answers to plaintiff's first request for admissions, filed 2-27-67.
3- 6-67	Defendant's second request for admissions, filed 3-3-67.
3- 7-67	Defendant's answers to plaintiff's second set of plaintiff's interrogatories Nos. 21, 22, 40 and 41, filed 3-6-67.
3- 9-67	Reply, filed 3-8-67.
3- 9-67	Affidavit of Jerome G. Lee in opposition to defendant's motion for transfer, filed 3-8-67.
3- 9-67	Affidavit of Melvin Hochberg in opposition to defendant's motion for transfer, filed 3-8-67.
3-13-67	Plaintiff's answer to Request for Admission as deemed resubmitted, filed.

Date	*Filings—Proceedings*
3-13-67	Defendant's admission subject to the protection of Rule 36, filed.
3-15-67	Deposition of Thomas Hughes Jukes taken on March 7, 1967, filed.
3-15-67	Plaintiff's answers to defendant's second request for admissions, filed.
3-16-67	Plaintiff's second request for admissions, filed 3-15-67.
3-27-67	Deposition of James Edwin Archer taken on February 8, 1967, filed 3-23-67.
3-27-67	Deposition of Delbert Slater taken on Feb. 23, 1967, filed 3-23-67.
3-27-67	Defendant's answers to plaintiff's second request for admissions, filed 3-23-67.
3-28-67	Deposition of E. L. R. Stokstad filed 3-27-67.
3-28-67	Continued Deposition of E. L. R. Stokstad filed 3-27-67.
3-31-67	Trial without Jury before Hon. Anthony T. Augelli (3-28-67). Trial adjourned to 3-29-67.
3-31-67	Trial continued: (3-29-67) Hearing on defendant's application for entry of judgment. Ordered application denied. Decision reserved.
4-12-67	Ordered hearing on defendant's motion to transfer action to the Western District of Virginia, adjourned without date. (Augelli) (4-10-67).

Date	*Filings—Proceedings*
5- 5-67	Transcript re settlement of motion held on Jan. 20, 1967, filed 5-4-67.
5- 9-67	Affidavit of service of copies of plaintiff's objections to certain portions of depositions, etc., filed.
5-26-67	Consent order amending title of action, filed 5-25-67 (Augelli) Notice mailed.
6- 2-67	Notice of motion and motion by plaintiff to restrain defendants from prosecuting or taking further steps in the Civil Action pending in the Eastern District of Virginia, filed 6-1-67 (ret. 6-26-67 (Brief submitted).
6- 2-67	Affidavit of service of copies of plaintiff's notice of motion and motion to restrain defendants from prosecution or taking further steps in the Civil Action pending in the Eastern District of Virginia, filed 6-1-67.
6- 2-67	Affidavit of Melvin Hochberg in support of motion to enjoin prosecution, filed 6-1-67.
6- 2-67	Affidavit of George B. Finnegan, Jr. in support of motion to enjoin prosecution, filed 6-1-67.
6- 5-67	Transcript of hearing re preliminary injunction, filed 6-2-67.
6- 5-67	Defendant's notice of motion for transfer of action to Western District of Virginia and affidavit of service filed 6-3-67. (Ret. 6-26-67) (Brief submitted).

Appendix

Date	*Filings—Proceedings*
6-26-67	Affidavit of Jerome G. Lee in support of motion to enjoin The New Richmond action and in opposition to Cyanamid's motion to transfer the present case to Charlottesville, filed 6-23-67.
6-28-67	Hearing on plaintiff's motion to restrain defendants from prosecuting or taking further steps in the Civil action pending in the Eastern District of Virginia. Ordered motion granted. Order to be submitted. (Augelli) (6-26-67)
6-28-67	Hearing on defendant's motion for transfer of action to Western District of Virginia. Ordered motion denied. Order to be submitted. (Augelli) (6-26-67)
7- 7-67	Order denying defendant's motion to transfer action to Western District of Virginia, filed 7-6-67 (Augelli) Notice mailed.
7- 7-67	Order granting plaintiff's motion to restrain defendants from prosecuting or taking further steps in the Civil Action pending in the Eastern District of Virginia, filed 7-6-67 (Augelli) Notice mailed.
8-22-67	Transcript of hearings held 6-26-67 filed 8-21-67.
9-14-67	Transcript of testimony, filed 9-13-67 (2 Vols.)

I hereby certify that the foregoing is a TRUE COPY of the original on file in my office.

MICHAEL KELLER, JR., Clerk
Per Mary C. Dehmer, Deputy